IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.832 OF 2001

Bhimrao Ramchandra Khalate ...Appellant
Vs.
Nana Dinkar Yadav (Tanpure) & Anr. ...Respondents

Shri Vishwanath Talkute for the Appellant.
Shri Vijay Patil for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : AUGUST 11, 2006.

P.C.:

1. Submissions of the Advocates appearing for the parties were heard on the last date. The Second Appeal is filed by the original Plaintiff. The suit is based on document dated 22nd February, 1969. The contention of the Appellant-Plaintiff is that the document is in the nature of mortgage though it is styled as a conditional Sale Deed. The Trial Court decreed the suit by passing a preliminary decree by accepting the case made out by the Appellant-Plaintiff. The Appellate Court has interfered in an Appeal preferred by the original Defendants-Respondents.

2. The learned Advocate appearing for the Appellant submitted that the document was in the nature of mortgage by conditional sale. He submitted that the recitals in the document clearly show that only after the expiry of the term fixed in the

document, the Respondent was to become owner of the property. He invited my attention to section 58(c) of the Transfer of Property Act, 1882. He relied upon the decision of this court in the case of Kamal Shivajirao Katkar (Mrs) Vs. Gajarabai Sopanrao Katkar (Smt.) & Ors. reported in 2001(4) Bom.C.R. Page 187 in support of his contentions.

3. I have considered the submissions. Apart from a clause in document which contains the Marathi word "phed" (repayment) there is no other evidence on record to show that there was a relationship of debtor and creditor between the parties. As the Appellant-Plaintiff failed to establish that there was debtor and creditor relationship between the parties, the Appellate Court has come to the conclusion that document at Exhibit 68 was in the nature of the sale with option to repurchase. No fault can be found with the said finding of the Appellate Court.

4. No substantial question of law arises. Second Appeal is dismissed. No orders as to costs.

JUDGE